

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILLIAM MANNO, on behalf of himself
and all others similarly situated, and
derivatively on behalf of MAXAM
ABSOLUTE RETURN FUND, L.P.,

Plaintiff,

v.

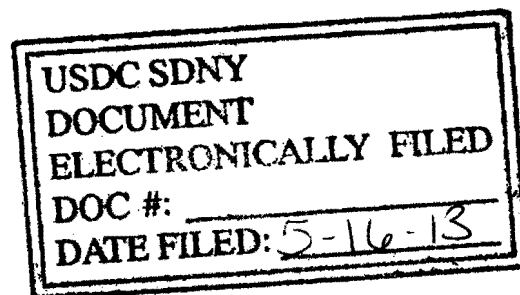
MAXAM CAPITAL GP, LLC; MAXAM
CAPITAL MANAGEMENT LLC;
MAXAM CAPITAL MANAGEMENT
LIMITED; and SANDRA L. MANZKE,

Defendants,

and MAXAM ABSOLUTE RETURN
FUND, L.P.,

Nominal Defendant.

10-cv-09260-LAP



**STIPULATION AND [REDACTED] ORDER LIFTING STAY FOR THE SOLE
PURPOSE OF PERMITTING PLAINTIFF TO FILE AN AMENDED
COMPLAINT**

WHEREAS, on December 10, 2010, Plaintiff William Manno, on behalf of himself and all others similarly situated, and derivatively (in such capacities, the "Plaintiff") on behalf of the Maxam Absolute Return Fund, L.P. ("MARF"), filed a Class Action and Derivative Complaint (the "Complaint") against Defendants Maxam Capital GP, LLC, Maxam Capital Management LLC, Maxam Capital Management Limited and Sandra L. Manzke (the "Maxam Defendants" and together with MARF, collectively, the "Defendants") in the above captioned action (this "Action");

WHEREAS, as reflected in the Stipulation and Order entered in this Action on April 6, 2011, Plaintiff and Defendants (collectively, the "Parties") in this Action agreed that Defendants would answer, move or otherwise respond to the Complaint on or before June 6, 2011; Plaintiff would file and serve his opposition(s), if any, to Defendants' motion(s) to dismiss, if any, on or before August 5, 2011; and Defendants would file and serve their replies, if any, in further support of any motion(s) to dismiss, if any, on or before September 6, 2011;

WHEREAS, on May 26, 2011, the Parties entered into a tolling agreement (the "Tolling Agreement"), and a stipulation staying all further proceedings and operative deadlines in this Action pending notice by either of the Parties of the termination of the Tolling Agreement (the "May 26, 2011 Stipulation");

WHEREAS, on May 31, 2011, the Court entered an Order staying the Action on the terms set forth in the Stipulation (Dkt. No. 11; the "Stay Order");

WHEREAS, the Plaintiff requested and the Parties have agreed that the stay of this Action temporarily may be lifted for the sole purpose of permitting Plaintiff to file an amended complaint, and that the stay should otherwise remain undisturbed;

WHEREAS, the Parties have agreed to enter into this Stipulation and (Proposed) Order Lifting the Stay for the Sole Purpose of Permitting Plaintiff to File an Amended Complaint (the "Stipulation") to effectuate the agreement set forth in the preceding recital; and

WHEREAS, the Parties have also entered into the First Amendment to the Tolling Agreement (the "Amendment"), which is attached as Exhibit A and incorporated as if set forth herein;

NOW THEREFORE, counsel for the undersigned parties, hereby STIPULATE AND AGREE as follows:

1. The foregoing recitals are hereby incorporated into this Stipulation by reference.
2. The stay of this Action is temporarily lifted for the sole purpose of permitting Plaintiff to file an amended complaint (the "Amended Complaint") within thirty (30) days after entry of an order approving this Stipulation. The stay shall otherwise remain undisturbed;
3. Defendants will have thirty (30) days from the date on which the Tolling Agreement is terminated to move, answer or otherwise respond to the Amended Complaint; Plaintiff will have thirty (30) days to oppose a motion to dismiss, if any; and Defendants will have fifteen (15) days to reply to any opposition by Plaintiff to any motion to dismiss.
4. Nothing in this Stipulation or the Amendment shall be construed as an admission or denial by any of the Parties as to the merits of any of the purported claims in this Action, or any of the potential defenses to those claims.

Dated: May 17, 2013
New York, New York

KOBRE & KIM LLP

By: 

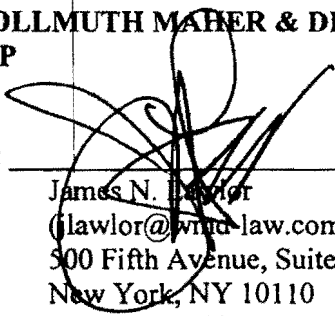
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*Counsel for Defendants MAXAM
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Counsel for Plaintiff William Manno

SO ORDERED:

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Capital Management LLC, MAXAM
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Counsel for Plaintiff William Manno

SO ORDERED:

Louella A. Predda

May 16, 2013

U.S.D.J.

716101

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILLIAM MANNO, on behalf of himself
and all others similarly situated, and
derivatively on behalf of MAXAM
ABSOLUTE RETURN FUND, L.P.,

Plaintiff,

v.

MAXAM CAPITAL GP, LLC; MAXAM
CAPITAL MANAGEMENT LLC;
MAXAM CAPITAL MANAGEMENT
LIMITED; and SANDRA L. MANZKE,

Defendants,

and MAXAM ABSOLUTE RETURN
FUND, L.P.,

Nominal Defendant.

10-cv-09260-LAP

FIRST AMENDMENT TO THE TOLLING AGREEMENT

Plaintiff William Manno (“Plaintiff”) and Defendants MAXAM Capital GP, LLC, MAXAM Capital Management LLC, MAXAM Capital Management Limited, Sandra Manzke, and Nominal Defendant Maxam Absolute Return Fund, L.P. (collectively, “Defendants”, and together with Plaintiff, each a “Party” and, collectively, “the Parties”), hereby enter into this First Amendment to the Tolling Agreement (the “Amendment”) dated as of May 26, 2011.

1. Capitalized terms in this Amendment shall have the same meanings ascribed to them as in the Tolling Agreement.

2. A new paragraph shall be designated as paragraph 1.A and added to the Tolling Agreement between existing paragraphs 1 and 2. The new paragraph 1.A shall read as follows: "By Stipulation dated May __, 2013, the Parties have agreed that the stay of the Action (Dkt. No. 11) may temporarily be lifted for the sole purpose of permitting Plaintiff to file an amended complaint (the "Amended Complaint"). The parties further agree that the stay shall otherwise remain undisturbed. Plaintiff's filing of the Amended Complaint, if permitted by the Court, shall have no effect on the tolling provisions set forth in paragraph 1 above."

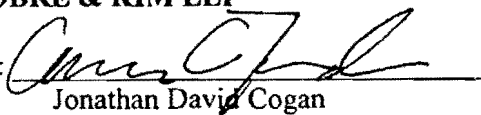
3. Paragraph 2 of the Tolling Agreement will be amended and shall read as follows: "Any Party may terminate this Agreement by giving forty-five (45) days written notice of such termination to be calculated from the date the notice is mailed to the individuals designated below for each Party."

4. A new paragraph shall be designated as paragraph 2.A and added to the Tolling Agreement between Paragraph 2, as amended above, and existing paragraph 3. The new paragraph 2.A shall read as follows: "Defendants agree to give Plaintiff written notice within five (5) days of the settlement or other disposition of *Picard v. Maxam Absolute Return Fund, L.P.*, Adv. Pro. No. 08-1789 (BRL) (Bankr. S.D.N.Y. Dec. 8, 2010).

IN WITNESS HEREOF, the Parties have caused this Amendment to be duly executed, by their duly authorized attorneys, dated as of May 13, 2013.

KOBRE & KIM LLP

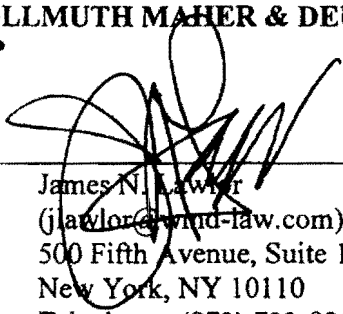
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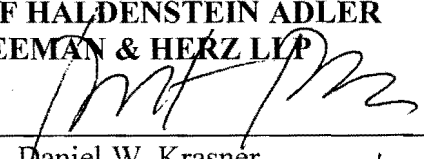
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